

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:

UNIVERSAL SERVICE

GENERIC CONTESTED CASE

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OFFICE OF THE
EXECUTIVE SECRETARY

DOCKET NO. 97-00888

COMMENTS OF VERIZON WIRELESS

Verizon Wireless ("VZW")¹ respectfully comments on the Tennessee Regulatory Authority ("TRA") Contested Case concerning the potential application of the state Universal Service Fund ("USF") contribution requirement to CMRS providers.² Under Tennessee statute, the TRA has the discretion to exclude CMRS carriers from its USF contribution framework, and there are strong policy reasons weighing in favor of such a wireless exception. If, despite these factors, the TRA decides to subject CMRS providers to this requirement, it should at least apply the appropriate contribution discounts for mobile-to-mobile and landline-to-mobile traffic.

¹ Verizon Wireless is the successor organization to GTE Mobilnet, which has previously been granted status as a party to this proceeding.

² In its May 1998 order on intrastate universal service issues, the TRA directed that "all providers of intrastate telecommunications services in Tennessee, regulated or not, shall be required to contribute to the intrastate Universal Service Fund." *Interim Order on Phase I of Universal Service*, Docket No. 97-00888 (May 20, 1998). At the TRA's Pre-Hearing Conference on April 3, 2001, conference attendees were invited to submit comments by May 14, 2001 on the issue of whether the TRA may request revenue information from CMRS providers and ultimately require them to contribute to the state USF.

I. THE TRA SHOULD NOT IMPOSE A CONTRIBUTION REQUIREMENT ON CMRS PROVIDERS

The TRA Has the Discretion to Exclude CMRS Providers from Its USF Contribution Framework

Under the Tennessee statute, the TRA has the discretion not to require wireless carriers to contribute to the state's intrastate USF program. The statutory provision on the intrastate USF, T.C.A. section 65-5-207, states that the TRA shall require "all telecommunications service providers" to contribute to the support of universal service. The term "telecommunications service provider," however, is defined by the statute to include only incumbent local exchange telephone companies, certificated individuals or entities, and individuals or entities operating pursuant to TRA franchise authority. T.C.A. § 65-4-101. CMRS providers do not fall into any of these categories, and, as a result, the TRA should exclude wireless carriers from its USF contribution requirement.³

Several Policy Factors Weigh Strongly in Favor of a CMRS Exception

1. Exclusion of non-regulated entities

From a general policy perspective, subsidies designed to reduce the price of regulated telecommunications services should be funded only from the revenues of other regulated businesses. Such a policy keeps the redistribution of regulated subsidies among regulated businesses and within a process that allows those businesses to appeal to the relevant agency for offsetting treatment if necessary. In the instant proceeding, the TRA should act in a manner consistent with this principle. Given that the TRA does not (and cannot) regulate the rates of

³ Federal statute leaves these intrastate USF policy questions to the states. The Communications Act of 1934 permits, but does not require, the states to subject wireless providers to intrastate USF contribution requirements. *See* 47 U.S.C. §254(f).

wireless providers,⁴ the TRA should not impose a contribution requirement on these wireless providers. Refraining from such assessments is particularly appropriate given that Verizon Wireless will have no legitimate opportunity to itself receive any USF subsidies.

2. Discretionary nature of wireless services

In deciding whether to impose an intrastate USF requirement on CMRS providers, the TRA must account for the fact that wireless service is a discretionary service for most consumers. Consumers are likely to be sensitive to increases in wireless rates, and, by raising wireless carriers' costs, these additional assessments could reduce demand and shift consumer spending away from wireless services. This result could dampen the wireless growth and innovation that has to date yielded great public interest benefits for consumers in Tennessee and elsewhere. The TRA should bear in mind that consumers are already frustrated with the number of fees, taxes, and other charges on their bills -- there is currently a national average of an 18% tax on telecommunications industry sales, compared to an average 6% tax on main street businesses.⁵

3. Treatment of other service providers

It would be unfair for the Commission to impose its contribution requirement on wireless carriers, given its dissimilar treatment of other emerging communications alternatives. In particular, while the TRA is certainly aware that the Internet is the most rapidly developing telecommunications alternative to wireline service, it has given no indication that it is

⁴ See 47 U.S.C. §332(c) (preempting state rate and entry regulation of CMRS providers).

⁵ *50-State Study and Report on Telecommunications Taxation*, Committee on State Taxation, November 29, 2000.

considering applying its contribution requirement to ISPs. Nor, for example, will the TRA's contribution requirement apply to cable operators and their expanding telecommunications offerings.

II. UNDER ANY CIRCUMSTANCE, REVENUE FROM MOBILE-TO-MOBILE AND LANDLINE-TO-MOBILE TRAFFIC SHOULD BE EXEMPT

If the TRA does impose a USF contribution requirement on wireless carriers, no USF surcharge should apply to wireless revenues earned from mobile-to-mobile calls. Clearly, any assessment imposed on a telecommunications service should at least bear some relationship to the network functions subsidized by universal service. Wireless-to-wireless calls in many cases do not rely on the network facilities that are subsidized by the proposed USF. Consequently, such revenues from wireless-to-wireless traffic should not be assessed to support that system.⁶

Any wireless contribution requirement should also exclude revenue from wireline calls terminating on a wireless handset. Otherwise, landline-to-wireless calls would be doubly assessed as compared to landline-to-landline calls, because some wireless customers are charged for at least some incoming calls. Clearly, this exception is necessary to maintain equity between wireline and wireless providers.


CONCLUSION

For all of the aforementioned reasons, the Commission should exclude CMRS providers from its intrastate USF contribution requirement. If it feels compelled to impose this

⁶ Recognizing that "a portion of the [wireless industry's] minutes is originated and terminated entirely over the wireless network," the State Corporation Commission of the State of Kansas in 1998 for this reason reduced wireless carriers' state USF assessments by 5.03%, and it recently adjusted this reduction to 9.69%. *See Staff Report and Recommendation Regarding Wireless Providers* KUSF Assessment, Docket No. 00-GIMT-236-GIT, at 1 (September 15, 2000); Order, Docket No. 00-GIMT-236-GIT (December 4, 2000).

requirement, it should at least apply the appropriate contribution discount to mobile-to-mobile and landline-to-mobile calls.

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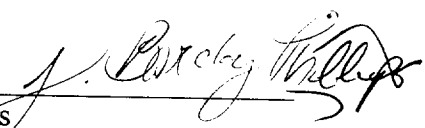
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